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In the Supreme Court of the United States

OCTOBER TERM, 1961

BLAISE D'ANTONI & ASSOCIATES, INC., and BLAISE D'ANTONI, *Petitioners*

v.

SECURITIES AND EXCHANGE COMMISSION

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D. C.

PETER A. DAMMANN,
General Counsel,

DAVID FERBER,
Assistant General Counsel,

FAITH CURRIER,
Attorney,
Securities and Exchange Commission,
Washington 25, D. C.

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STATUTE AND RULES:

Securities Exchange Act of 1934, 48 Stat. 881, as amended, 15 U.S.C. 78a *et seq.*:	
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In the Supreme Court of the United States

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v.

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 11-14, 15-17) are reported at 289 F. 2d 276 and 290 F. 2d 688.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1961 (Pet. App. 14). A petition for rehearing was denied on June 12, 1961 (Pet. App. 17). The

petition for a writ of certiorari was filed August 30, 1961. This Court has jurisdiction under Section 25(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78y, and 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Securities and Exchange Commission properly revoked the registration of a broker and dealer in securities which had repeatedly failed to comply with the Commission's rules requiring the maintenance of adequate capital.

2. Whether an applicant for registration as a broker and dealer in securities has an unqualified right to withdraw its application after the Securities and Exchange Commission has instituted denial proceedings.

STATUTES AND RULE INVOLVED

The pertinent statutes and rule are set out in Appendix B of the Petition, pp. 18-21, and in the Appendix, *infra*, pp. 9-10.

STATEMENT

Petitioner Blaise D'Antoni was registered with the Securities and Exchange Commission as a securities broker from October 5, 1953, to December 18, 1955 (R. 14).[1] During September 1955, Mr. D'Antoni failed to comply with the Commission's net capital rule (17 C.F.R. 240.15c3-1, App., *infra*, p. 10), (R. 15, 16) requiring that the aggregate indebtedness of brokers

[1] "R." refers to the record certified to this Court by the court below on June 15, 1961. "Rec." refers to the brief and appendix of the Securities and Exchange Commission filed in the court below which were certified to this Court as part of the record on September 8, 1961.

and dealers not exceed 20 times their net capital, and was notified of these violations by the Commission's staff (R. 18). On September 27, 1955, D'Antoni incorporated Blaise D'Antoni and Associates, Inc., to succeed to his business and registration, so that the aggregate indebtedness and net capital of his securities business would not be affected by his own personal ventures (R. 16; Rec. 24-25). Mr. D'Antoni became president, director and sole stockholder of D'Antoni, Inc., and dominated and controlled its affairs (R. 14, 19-20).

Both on and before November 4, 1957, and on April 30, 1959, and for more than five months thereafter, during which time D'Antoni, Inc. used the mails and interstate instrumentalities to effect over-the-counter securities transactions, the firm's aggregate indebtedness exceeded twenty times its net capital (R. 16, 17). The firm was repeatedly advised by the Commission's staff that it was acting in violation of the net capital rule (R. 18). On October 9, 1959, D'Antoni, Inc., filed a notice of withdrawal of its registration (R. 14), and, on October 21, Mr. D'Antoni applied for registration as a sole proprietor (R. 7, 14).

Under the provisions of Section 15(b) of the Securities Exchange Act of 1934 (Pet. App. B, pp. 18-20) and Rule 15b-6 thereunder, 17 C.F.R. 240.15b-6, the company's withdrawal and Mr. D'Antoni's registration would have become effective automatically had the Commission taken no action. On November 6, 1959, however, the Commission issued an order (R. 19-25) instituting consolidated proceedings to determine whether the withdrawal and registration were in the public interest, whether the company's registration should be revoked, and whether Mr. D'Antoni's application for registration should be denied. This order

postponed the effective date of Mr. D'Antoni's registration.

Under the Act, an individual is subject to certain disabilities if his conduct is found by the Commission to be the cause of the revocation or denial of the registration of a broker or dealer. On November 9, 1959, Mr. D'Antoni was notified by the Commission that his activities might be found to be the cause of an order to be entered against D'Antoni, Inc. (Rec. 25-36). On November 17, 1959, he appeared at a hearing held before a hearing examiner of the Commission and sought to withdraw his application for registration (R. 8, Rec. 26).

After a stipulation of facts was entered in the record (R. 14-19), and petitioners waived further hearings, the Commission issued its findings and opinion (R. 26-32). On the basis of the repeated violations of the net capital rule by D'Antoni, Inc., aided and abetted by Mr. D'Antoni, the Commission determined that it was in the public interest to revoke the registration of D'Antoni, Inc., and to deny Mr. D'Antoni's application for registration and his request to withdraw his application.[2] The Commission also found that Mr. D'Antoni was responsible for the revocation.

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[2] The court below did not find, as indicated by petitioner (Pet. 4) that "the volume of business was small, the transactions were mostly with the D'Antoni family or with close friends, no losses were suffered by customers or other brokers or dealers, the affairs of the company have been settled in full, and the company has ceased to do business." This quotation was merely a paraphrase by the court of petitioner's own argument to the court (see Pet. App. 13).

ARGUMENT

The decision of the court below is correct. There is no conflict among the circuits or with any decision of this Court, and the questions do not merit review by this Court.

1. Petitioners' arguments that a violation of the net capital rule is merely a "bare violation" of one of the Commission's "good-housekeeping rules" (Pet. 2, 8), that the public interest was insufficient to justify revocation of the company's registration because only a few investors were involved, and that the company managed to make good its obligations to the investors (Pet. 4) all ignore the preventive and protective purpose of the Commission's functions under the Securities Exchange Act of 1934. This Act is a comprehensive law designed to protect public investors against securities-trading abuses.

Section 15(b) of the Act (Pet. App. B, pp. 18-20) requires denial or revocation of the registration of a broker or dealer if the Commission, after notice and opportunity for hearing, finds, *inter alia*, that he has willfully violated the Act or any rule there under and that denial or revocation is in the public interest. Section 15A, which provides for registration of national securities associations and establishes standards for such associations, provides in Subsection (b)(4) (App., *infra*, p. 9) that, absent approval by the Commission, no broker or dealer may enjoy membership in such an association if he had been the cause of an order of denial or revocation of registration under Section 15(b). Thus, as the court below recognized, the statutory provisions for regulation of brokers are "integrally linked * * * and together they form part of

the regulatory scheme for the long-range protection of investors" (Pet. App. 15).

The net capital rule, 17 C.F.R. 240.15c3-1, promulgated under the Act, requires brokers and dealers trading over the counter not to permit their "aggregate indebtedness" to exceed twenty times their "net capital," as those terms are defined in the rule.[3] As the Commission stated in *National Association of Securities Dealers, Inc.*, 12 S.E.C. 322, 326, 328, the rule was adopted "to achieve customer protection against financially unsafe brokers and dealers" and was designed to "provide a minimum cushion of 5 percent of the aggregate indebtedness of the broker or dealer as a margin of safety to his customers." Thus, the court below noted, "The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors" (Pet. App. 13).

The Commission need not wait until investors actually suffer losses before it asserts its authority to remove a financially irresponsible broker from the market. See *Hughes* v. *Securities and Exchange Commission*, 174 F. 2d 696, 974 (C.A. D.C.); *Bobbroff* v. *United States*, 202 F. 2d 389, 391 (C.A. 9). Petitioners' argument (Pet. 8-9), that revocation was unnecessary in the public interest since the firm sought to withdraw voluntarily from the securities business, ignores the significance of Section 15A(b)(4) insofar as it contemplates that the Commission will designate the individuals who

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[3] Aggregate indebtedness is defined as "the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever * * *." 17 C.F.R. 240.15c3-1(c)(1). Net capital is defined as the excess of a broker or dealer's "total assets over total liabilities," subject to certain adjustments. 17 C.F.R. 240.15c3-1(c)(2).

are responsible for the denial of revocation of registration. By this procedure the Commission is able to isolate those who are actually responsible for the illegal activities of a registrant in order to prevent them from further jeopardizing the interests of investors.

2. The holding that Mr. D'Antoni did not have an unqualified right to withdraw his application for registration is not in conflict with *Jones* v. *Securities and Exchange Commission*, 298 U.S. 1. That case dealt with the provisions of registration for securities under the Securities Act of 1933. The question presented in the present case arises under the Securities Exchange Act of 1934 and concerns an application for registration as a broker and dealer in securities. In the case of Mr. D'Antoni's application and attempted withdrawal thereof, the Commission's determination was directed not only to the application he had filed but also, under Section 15(b), to his future employment as a person "controlled by" a registered broker or dealer or to his "controlling" a registered broker or dealer, and under Section 15A of the Act, to his future affiliation with a member of a registered national securities association. The denial of his registration thus had an impact beyond the instant proceeding.

3. The action of the Commission was not punitive as claimed by petitioners (Pet. 9-10), but remedial, since its primary and predominant effect was to protect members of the public from a financially irresponsible broker. Compare *Flemming* v. *Nestor*, 363 U.S. 603, 614. Petitioners' claim (Pet. 10), that the Commissions's action will "stigmatize" Mr. D'Antoni's good name, ignores the fact that the only context in which his reputation might have been impaired is in his ca-

pacity as a securities broker, a capacity which he claims to have abandoned.

Since petitioners admit all the facts on which the Commission's order was based, and since these facts disclose repeated violations of the requirements of financial responsibility there is no occasion for this Court to substitute its judgment upon the remedy for that of the Commission and the court below.

CONCLUSION

For the foregoing reasons, the petition for a writ *of certiorari should be denied.*

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

PETER A. DAMMANN,
General Counsel,

DAVID FERBER,
Assistant General Counsel,

FAITH COLISH,
Attorney,
Securities and Exchange Commission.

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APPENDIX

Section 15A(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78o-3 provides in pertinent part:

> An applicant association shall not be registered as a national securities association unless it appears to the Commission that—
>
> * * * * *
>
> (4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no broker or dealer shall be admitted to or continued in membership in such association, if (A) such broker or dealer, whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such, * * * (B) is subject to an order of the Commission denying or revoking his registration pursuant to section 15 of this title * * *, or (C) by his conduct while employed by, acting for, or directly or indirectly controlling or controlled by, a broker or dealer, was a cause of any * * * order of the character described in clause * * * (B) which is in effect with respect to such broker or dealer;
>
> * * * * *

Rule 15c3-1 under the Securities Exchange Act of 1934, 17 C.F.R. 240.15c3-1 provides in pertinent part:

> (a) *General provision.* No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 percent of his net capital.
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> * * * * *

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